

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

United States Navy
Commander Navy Region Southwest
33000 Nixie Way, Building 50, Suite 326
San Diego, California 92147-5110

EPA ID Number: CA7170090016
Respondent

Docket Number: HWCA 2004-0550

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and United States Navy Naval Air Station North Island (Respondent) enter into this Consent Order and agree as follows:

1. On January 12, 2005, Shaw Infrastructure was awarded the contract to take over all the Public Works Center environmental workload, including all permits. There was a 79-day transition period and as of April 1, 2005, Shaw became the sole facility operator. The United States Navy, Commander Navy Region Southwest submitted the change of operator permit modification by June 15, 2005, and the permit modification was accepted and approved by the Department as of the effective date of June 28, 2006. The parties recognize that when a facility is owned by one person and operated by a different person, the principal responsibility for the conduct of the operations at the facility lies with the operator, but the owner and the operator are jointly responsible for any violations of standards or laws.

2. Respondent is authorized to operate as a treatment, storage and transfer hazardous waste facility under a Hazardous Waste Facility Permit (Permit) issued

by the Department on January 5, 1998. The Permit will expire on January 4, 2008. The permitted areas are the Consolidation, Storage and Transfer areas, (CST-1 and CST-2), the Industrial Waste Treatment Plant (IWTP), and the Oil Recovery Plant (ORP) located at Respondent's Hazardous Waste Facility Complex, in San Diego, California, 92135 (Site).

3. The Department inspected the Site on May 5, 2004, June 23 – 24, 2004, October 26, 2004, June 28 – 29, 2005, July 6, 2005, and March 14 -16, 2006.

3. The Department alleges the following violations:

3.1. Respondent violated California Code of Regulations (Cal. Code Regs.), title 22, section 66264.31 in that on or about June 23, 2004, October 26, 2004, June 28, 2005, and March 16, 2006, Respondent failed to maintain and operate the secondary containment of CST-1 and CST-2 in a manner to minimize the possibility of a release of hazardous waste to the environment. Cracks and gaps were noted in the secondary containment of CST-1, CST-2 areas.

3.2. Respondent violated Cal. Code Regs., title 22, section 66264.75(k), in that on or about June 28, 2005, Respondent failed to submit a copy of the annual environmental monitoring report to the Department by March 1, 2005.

3.3. Respondent violated Cal. Code Regs., title 22, section 66264.13, and Health and Safety Code, section 25202, in that on or about June 28, 2005, Respondent failed to follow its waste analysis plan by not repeating analysis of the waste streams annually. Respondent failed to analyze a total of eight waste streams for IWTP and ORP in 2005.

3.4. Respondent violated Cal. Code Regs., title 22, section 66270.30 and Permit Condition section III.F.1.d, in that on or about March 14, 2006, Respondent double stacked forty 55-gallon drums of liquid waste and ten cubic yard boxes of hazardous waste in the CST-2 storage area.

3.5. Respondent violated Cal. Code Regs., title 22, section 66264.192 (b), (c), (i)(1) and (l)(1-11) in that on or about May 5, 2004, and June 23, 2004, Respondent failed to obtain the initial assessment and certification by an independent, third party professional engineer (PE) registered in the State of California, of a new tank system and secondary containment prior to placing it in service. Ancillary equipment servicing new "Pier K" (pump station K and piping) did not receive the initial assessment and certification when put into service in 2000. Also, the renewal PE certifications for all existing IWTP/ORP tank systems, their ancillaries at "Pier J", (Pump station 1351 and piping), "the quay wall" (pump station 1352 and piping) and all the secondary containment were not performed on schedule. All such equipment was due for at least one PE certification renewal by June 2005.

3.6. Respondent violated Cal. Code Regs., title 22, section 66264.192(b)(k)(l)(9D) and 66264.193(e)(1)(C) in that on or about May 5, 2004 and June 23, 2004, Respondent failed to design and operate the secondary containment of the IWTP and ORP areas free from cracks and gaps. Cracks and gaps were observed in the secondary containment of the ORP filter press area and the secondary containment floor of the legacy area #17. Additionally, physical modifications were required in some IWTP and ORP secondary containment areas to enable the independent third party PE assessment and certification. Respondent submitted a Class-2 permit modification application on February 27, 2006, and completed all the described work.

4. A dispute exists regarding the alleged violations.
5. The parties wish to avoid the expense of litigation.
6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. Respondent has provided the Department with documentation to substantiate correction of all the violations described above.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.5. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may with a federal government escort, enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.6. Document Availability: Respondent shall maintain a readily available copy of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.7. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party

to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.8. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.9. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Within thirty (30) days of the effective date of this Consent Order The United States Navy shall pay the Department a total of \$59,000 penalty. The payment may be made by electronic funds transfer to the Department of Toxic Substances Control, and shall include the following information:

Supplier Name: Department of Toxic Substances Control

Remittance Address: 1001 I Street, Sacramento California 95814

Supplier TIN #: 68-0281381

Bank: Bank of America

Bank Routing Number: 0260-0959-3

Bank Account Number: 121

The remittance detail shall be emailed to: tzhan@dtsc.ca.gov or fax to (916)322-0274.

If the payment is made by check, it shall be made payable to the Department of Toxic Substances Control, shall identify Respondent and Docket Number, HWCA 2004-0550, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

If the payment is made by check, a photocopy of the check shall be sent to:

Carmelita E. Lampino
Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

If the United States Navy fails to make payment as provided above, the United States Navy agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or California Regional Water Quality Control Board.

Dated: April 12, 2007

Original signed by Anthony E. Gaiani

Captain Anthony E. Gaiani, Commanding Officer
Naval Air Station North Island
United States Navy

Dated: April 10, 2007

Original signed by Peter Kennedy

Peter Kennedy, Environmental Program Director
Commander Navy Region Southwest
United States Navy

Dated: April 17, 2007

Original signed by Yvonne Sanchez

Yvonne Sanchez, Chief
Statewide Compliance Division
Cypress Branch
Department of Toxic Substances Control